

# Memorandum

**To:** Chairman and Commissioners

**Date:** February 16, 1999

**From:** Robert I. Remen

**File No:** K38.7  
BOOK ITEM 2.5c (4)  
ACTION

**Ref:** ENVIRONMENTAL ENHANCEMENT MITIGATION PROJECT - CARMEL MOUNTAIN

**Issue:** Should the Commission use EE&M funds, set aside in August 1998, to pay for a December 1996 settlement agreement between the City of San Diego and Mesa Top Properties, resolving a July 1995 inverse condemnation lawsuit?

**Background:** The City of San Diego applied for EE&M funds, both in FY97-98 and FY98-99, to acquire up to a dozen one-acre parcels on Carmel Mountain, east of I-5 near Del Mar. Only one of the intended parcels was acquired in FY97-98 (for approximately \$30,000); and the remaining parcels seeking FY98-99 EE&M funds were acquired through other means.

Therefore, at the Commission's August 1998 meeting, when the FY98-99 EE&M Program was to be adopted, San Diego made a last minute verbal request to redirect the "left-over" funds from FY97-98 (\$274,415) and the new funds being sought for FY98-99 (\$224,360) toward the purchase of a much larger area that was subject to a 1995 inverse condemnation lawsuit between San Diego and Mesa Top Properties. Unfortunately, San Diego's request was not accompanied by an application for this alternate property acquisition. The Commission held in abeyance the sought-after funds and asked staff to secure such an application and have it assessed under the EE&M Guidelines.

**New Project Application:** In reviewing its new application, staff has found the following. Under a 1996 settlement agreement to this 1995 lawsuit, San Diego was to purchase a 40-acre portion of this property for \$5 million by the end of 1997, with a second 40-acre portion to be purchased for \$4 million during 1998 and 1999. It is the second of these two portions for which San Diego is seeking \$0.5 million in EE&M funds toward the \$4 million purchase price as agreed to over two years ago. The Resources Agency reviewed the property in question and scored it comparable to the original application aimed at acquiring a series of one-acre parcels.

**Issue - Funding Prior Local Commitments:-** Thus, the only issue with this substitute project appears to be that of making a new funding commitment to honor a prior local transaction. The Commission's Financial Guidelines and the Resources Agency's EE&M Program Procedures and Criteria both state that costs incurred in advance of a project being programmed are not eligible for reimbursement:

Financial Guidelines - local agency may start reimbursable project development work any time after the date a project is adopted into a state program;

Financial Guidelines - local agency cannot undertake reimbursable capital outlay work before both project approval by the Commission and project agreement with Caltrans;

Financial Guidelines - local agency cannot actually get reimbursement for any work being done until after funding allocation by the Commission;

EE&M Procedures/Criteria - All such costs are funded on a reimbursement basis, and will be held to the ratio of EE&M funds to "Other Sources of Funding" designated in the budget and grant agreement, which is generally the ratio specified by the applicant in the original project proposal.

EE&M Procedures/Criteria - Costs incurred in advance of preliminary approval by the Commission are not eligible for reimbursement. All State requirements must be met and an agreement signed and approved between the State and applicant before capital expenditure costs are incurred against the grant in order to be assured of reimbursement.

These provisions are intended to help assure that limited State funds--in this case, EE&M funds--result in new activities, rather than merely "bailing out" and displacing previous funding commitments.

**Thus, at question here is whether a new programming commitment of EE&M funds associated with a 1995 inverse condemnation, a subsequent law suit, and a 1996 settlement agreement is allowable or advisable.**

**Recommendation:** Commission staff questions the appropriateness of using these funds for a prior condemnation and the subsequent settlement agreement associated with the 1995 lawsuit, particularly given that setting aside this proposal would result in the use of these funds for other, more clearly eligible EE&M projects on the prioritized FY98-99 EE&M Program list.

In the event that the Commission wishes to proceed with this project, an allocation resolution has been prepared by Caltrans for action by the Commission.

**CALTRANS BOOK ITEM/RESOLUTION NOT AVAILABLE  
ELECTRONICALLY**